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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

MUR 6436

LITTLE COMPTON TAXPAYERS ASSOCIATION

JOHN LOUGHLIN

FRIENDS OF JOHN LOUGHLIN AND MIA

CAETANO JOHNSON, AS TREASURER

)
) DISMISSAL AND
) CASE CLOSURE UNDER
) THE ENFORCEMENT
) PRIORITY SYSTEM

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GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria to allocate its resources and decide which cases to pursue. These criteria include, but are not limited to, an assessment of (1) the gravity of the alleged violation, both with respect to the type of activity and the amount in violation, (2) the apparent impact the alleged violation may have had on the electoral process, (3) the legal complexity of issues raised in the case, (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended ("Act"), and (5) development of the law with respect to certain subject matters. It is the Commission's policy that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss certain cases, or in certain cases where there are no facts to support the allegations, to make no reason to believe findings.

For the reasons set forth below, this Office recommends that the Commission dismiss the allegations as to respondent Little Compton Taxpayers Association ("Little Compton") and make no reason to believe findings as to John Loughlin and Friends of John Loughlin and Mia Caetano Johnson, in her official capacity as treasurer ("the Committee").

In this matter, complainant William Brett McKenzie stated that Little Compton disseminated a mailer dated October 27, 2010 that, among other items, endorsed John Loughlin

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1 for Congress from Rhode Island's First Congressional District.¹ According to the complainant,
2 Little Compton is not registered with the Commission as a political action committee and he
3 claims that its "endorsement of candidates is beyond their mandate as a community tax policy
4 organization." Furthermore, the complainant asserts that the Committee failed to report the costs
5 of this "contribution."

6 Attached to the complaint is what appears to be the mailer in question, which is in color
7 and printed on glossy paper, and consists of two double-sided pages, most of which contain text,
8 some of which is in color, while a fourth half-page solicits donations. Most of the first page is
9 taken up with a sample ballot, with candidates favored by Little Compton indicated as such, and
10 a side column of text supporting and opposing various candidates. The sample ballot lists
11 candidates for fourteen offices, only one of which is federal, while the others are state or local.
12 Other pages of the mailer discuss state and local tax issues and schools, and the last page
13 includes a membership form. In addition, the complainant attaches a photograph of what he
14 describes as a "campaign expenditure of a similar organization, indicating that it is RI [sic]
15 practice to consider such activities as reportable campaign expenditure filings," although there is
16 no indication that this filing is related to Little Compton. Thus, it appears that the complainant is
17 alleging that Little Compton should have registered with the Commission and that the
18 Committee should have reported Little Compton's mailer as a contribution or, alternatively, that
19 Little Compton should have filed an independent expenditure report with the Commission
20 disclosing the cost of the mailer.

21 Both Little Compton and the Committee filed responses. According to Little Compton, it
22 is not a registered political committee because it is incorporated with the State of Rhode Island as

¹ Mr. Loughlin was defeated in the general election.

1 a non-profit corporation and, according to the terms of its constitution, is a non-partisan
2 organization that does not align itself with political candidates, either directly or indirectly.
3 Little Compton states that its mailer, which was sent to every "mailbox in Little Compton,"
4 endorsed Republicans, Democrats, and members of third parties who shared its views on low
5 taxes and small government. In its response, the Committee denies any coordination with Little
6 Compton and states that it made no expenditures in connection with the mailer, and asks that the
7 case be dismissed. Neither the complaint nor the responses provide information as to the
8 expenses involved in the production and dissemination of the mailer.

9 It appears that the costs associated with the mailer could be viewed either as an
10 independent expenditure or an expenditure that could trigger political committee status for Little
11 Compton. An independent expenditure is an expenditure for a communication that expressly
12 advocates the election or defeat of a federal candidate, but is not coordinated with a candidate or
13 political party. 2 U.S.C. § 431(17); 11 C.F.R. § 100.16(a). Individuals, partnerships, and other
14 entities, except for political action committees or party committees, must report independent
15 expenditures exceeding \$250 per calendar year. 11 C.F.R. § 109.10(b). When such an
16 independent expenditure is made on behalf of clearly-identified non-Federal candidates, as well
17 as clearly-identified federal candidates, the expenditure shall be apportioned to determine the
18 benefit expected to be derived by the federal candidates, such as comparing the time or space
19 devoted to the federal candidate to the time or space devoted to all candidates. 11 C.F.R.
20 § 106.1(a)(1).

21 Any club, association, or other group of persons which receives contributions or makes
22 expenditures exceeding \$1,000 per calendar year must register with the Commission as a
23 political committee and file periodic reports of receipts and disbursements. See 2 U.S.C.

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1 §§ 431(4), 433, 434. However, the Supreme Court has stated that only organizations whose
2 "major purpose" is campaign activity can potentially qualify as political committees under the
3 Act. See, e.g., *Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life*,
4 479 U.S. 238, 262 (1986).

5 Although neither the complaint nor the responses have provided information relating to
6 the cost of the mailer, we have estimated the potential costs using publically available
7 information. Based on our research, we believe that the total costs associated with the mailer
8 may have been approximately \$3,600. Given that the federal candidate was only mentioned on
9 one page of the four page mailer and was the only federal candidate listed among many state and
10 local candidates, it is unlikely that the federal portion of the mailer could have exceeded \$1,000.
11 See 11 C.F.R. § 106.1(a)(1). However, the federal portion of the cost of the mailer could have
12 exceeded \$250 thereby triggering the threshold for reporting independent expenditures.²

13 Although it is possible that Little Compton may have triggered the threshold for reporting
14 independent expenditures, we note that the potential costs at issue are relatively low given the
15 small federal portion of the mailer. Therefore, we believe that further Enforcement action is
16 unwarranted. Accordingly, under EPS, the Office of General Counsel has scored MUR 6436 as
17 a low-rated matter and therefore, in furtherance of the Commission's priorities as discussed
18 above, the Office of General Counsel believes that the Commission should exercise its
19 prosecutorial discretion and dismiss the allegations as to the Little Compton Taxpayers
20 Association. See *Heckler v. Chaney*, 470 U.S. 821 (1985). We also recommend that the
21 Commission find no reason to believe that John Loughlin, and Friends of John Loughlin and Mia

² After reviewing the public record, we discovered that the complainant in this matter filed a complaint with the Rhode Island State Board of Elections against Little Compton, and one of Little Compton's officials, concerning the mailer at issue here, see <http://sos.ri.gov/documents/publicinfo/omdocs/minutes/132/2011/22538.pdf>. However, no information as to the cost of the mailer was disclosed.

Caetano Johnson, in her official capacity as treasurer, violated the Federal Election Campaign Act of 1971, as amended, close the file, and send the appropriate letters.

RECOMMENDATIONS

1. Dismiss the allegations as to the Little Compton Taxpayers Association.
2. Find no reason to believe that John Loughlin, and Friends of John Loughlin and Mia Caetano Johnson, in her official capacity as treasurer violated the Federal Election Campaign Act of 1971, as amended.
3. Close the file and send the appropriate letters.

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10/3/11
Date

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